

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MICHAEL MILLER,

**Plaintiff**

V.

JOHN KEAST, et al.,

## Defendants

Case No.: 3:23-cv-00371-MMD-CSD

Order

Re: ECF Nos. 11, 12

Plaintiff suffered burns to most of his body as a result of a house fire when he was a child. Before being incarcerated, he received skin grafts and other treatment through including the placement of a soft tissue expander near his right hip (to expand the soft tissue so the scar contracture could be excised on the right side), but this did not occur, likely because he was subsequently incarcerated. He also suffered from a granuloma on the right eyelid which required surgery. He alleges that his surgeon had ordered ongoing skin grafts, eyelid reconstruction surgery, removal of the soft tissue expander, and pain management for his burns related conditions.

The court screened his complaint and allowed him to proceed with a retaliation claim against Dr. Halki based on allegations that Dr. Halki knew about his required treatment but failed to provide it because Plaintiff complained about Dr. Halki working while intoxicated. He was also allowed to proceed with an Eighth Amendment deliberate indifference to serious medical needs claim against Dr. Halki, Director of Nursing Keast, and Hartman (whom he alleges denied his grievance on the issue) regarding the need for skin grafts, eyelid reconstruction surgery,

1 removal of the soft tissue expander, and pain management for his burns and related conditions.  
 2 (ECF No. 6.)

3 Plaintiff subsequently filed a motion for temporary restraining order (TRO) and  
 4 preliminary injunction (PI) seeking an order that he be sent to outside medical facilities for his  
 5 burns, eye condition, orthopedic and gastric issues to diagnose and treat his conditions.<sup>1</sup> (ECF  
 6 Nos. 11, 12.)

7 According to the medical records submitted by Defendants in support of their opposition  
 8 to the motions, Dr. Benson<sup>2</sup> requested a consultation with plastic surgery regarding the tissue  
 9 expander and the right eye surgery on June 22, 2022, which was approved by the Utilization  
 10 Review Committee (URC) on June 29, 2022. (ECF No. 15-4 at 2.) A plastic surgery consultation  
 11 was also requested on July 25, 2022, regarding the eye granuloma which required surgical  
 12 removal. (ECF No. 15-2 at 3.) There is a notation on August 1, 2022, that the consultation with  
 13 plastic surgery was previously approved. (ECF No. 15-3 at 2.)

14 Plaintiff complained of eye pain and difficulty seeing and bleeding in July 2023, and it  
 15 was noted that the surgical consultation had been approved and was pending scheduling. (ECF  
 16 No. 15-1 at 2-3.)

17 Plaintiff eventually saw plastic surgeon Scott Wyrie on January 26, 2024. Dr. Wyrie  
 18 referred Plaintiff to Dr. Marcus Ko<sup>3</sup> for evaluation and treatment of the large eyelid granuloma.  
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20 <sup>1</sup> Plaintiff is not proceeding with claims concerning orthopedic or gastric issues so it is unlikely  
 21 Plaintiff will be successful in obtaining injunctive relief with respect to these conditions.

22 <sup>2</sup> Dr. Benson is not currently named a defendant, though after reviewing the medical records  
 provided by Defendants it is likely Plaintiff may seek leave to amend to add him as well as  
 members of the URC as defendants.

23 <sup>3</sup> Dr. Ko is an ophthalmologist who performs eye plastic surgery. See [Eyelid Surgery Reno](http://EyelidSurgeryReno.com) |  
[Nevada Eye Plastic Surgery \(nveyeplasticsurgery.com\)](http://NevadaEyePlasticSurgery.com), last visited October 24, 2024.

1 Dr. Wyrie also evaluated the soft tissue expander, which was causing Plaintiff pain, and  
2 determined that it was “certainly indicated to remove the expander,” but requested imaging be  
3 performed before scheduling the surgery. (ECF No. 15-7 at 3-4.)

4 On July 29, 2024, Dr. Benson requested an urgent consultation with plastic surgeon Dr.  
5 John P. Brosius, noting Plaintiff had an eyelid granuloma with symptomatic bleeding that was  
6 rapidly growing, as well as the presence of a right flank tissue expander. Dr. Benson indicated  
7 Plaintiff was a patient of Dr. Brosius prior to his incarceration and Dr. Brosius had previously  
8 agreed to perform the required surgery on the eyelid and right flank tissue expander and to  
9 perform the needed skin grafts and contracture repair. (ECF No. 15-6 at 2.)

10 There is no indication that some 10 months after the consultation with Dr. Wyrie, and  
11 three months after Dr. Benson’s request for an *urgent* consultation with Dr. Brosius, that  
12 anything further has occurred with respect to the treatment for Plaintiff’s eyelid, removal of the  
13 tissue expander, or any further skin grafts or contracture repair. There are no records  
14 demonstrating that the imaging requested by Dr. Wyrie has occurred, or that Plaintiff has been  
15 referred to an ophthalmologist as recommended.

16 The court will require Defendants to provide a declaration from a physician with  
17 knowledge of Plaintiff’s conditions and treatment (whether Dr. Halki, Dr. Benson or the NDOC  
18 Medical Director, or other treating physician within NDOC) regarding the status of the requested  
19 referral to Dr. Brosius and the treatment for removal of the tissue expander, surgical removal of  
20 the eyelid granuloma, any further skin grafts and contracture repair required, and pain  
21 management for Plaintiff’s burns.

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## CONCLUSION

2 On or before **October 31, 2024**, Defendants shall provide a declaration from a physician  
3 with knowledge of Plaintiff's conditions and treatment (whether Dr. Halki, Dr. Benson or the  
4 NDOC Medical Director, or other treating physician within NDOC) regarding the status of the  
5 requested referral to Dr. Brosious and the treatment for removal of the tissue expander, surgical  
6 removal of the eyelid granuloma, any further skin grafts and contracture repair required, and pain  
7 management for Plaintiff's burns. The declarant shall be prepared to testify at a hearing on  
8 Plaintiff's motions for injunctive relief if deemed necessary by the court after reviewing the  
9 declaration.

## 10 | IT IS SO ORDERED.

11 | Dated: October 24, 2024

C S D  
Craig S. Denney  
United States Magistrate Judge